

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: BELL ATLANTIC – RHODE ISLAND
COMPLIANCE FILING ON
EXPANDED LOCAL CALLING AREAS

DOCKET NO. 2912

Report and Order

On May 3, 1999, the New England Telephone & Telegraph Company, d/b/a Bell Atlantic – Rhode Island (“BARI”) made a Compliance Filing¹ with the Public Utilities Commission (“Commission”). The tariff material included three proposed changes: local calling area expansion, rate group consolidation, and one-way calling into Providence.

Under BARI’s proposal, the local calling areas of ten exchanges would be expanded, thus eliminating toll calling between these newly expanded exchanges. Because expansion of those calling areas would have created some inequities in the basic exchange rates without some reclassification, the existing twenty-one rate groups would be consolidated into six rate groups, resulting in rate reductions ranging from \$0.14 to \$0.89 per month. Finally, all calls from anywhere in the state to the Providence exchange would be considered local calls, but calls made from the Providence local exchange to certain other exchanges would remain toll calls. BARI estimated that the capital costs associated with the local calling area

¹ In its transmittal letter on May 3, 1999, BARI represented that the filing was made in compliance with the Commission’s open meeting directive of March 30, 1999. The minutes of the meeting reflect a mandate that the utility look at the continuing problem of local calling areas.

expansion would total at least \$8,000,000, and that the Company would experience annual revenue losses of approximately \$6,500,000. BARI stated that it intended to recover these costs and revenue losses in future Price Regulation Plan ("PRP") filings.

Following public notice, the Commission convened a public hearing at its offices at 100 Orange Street, Providence, on May 27, 1999. The following appearances were entered:²

FOR BARI:	Keefe B. Clemons, Esq. Bruce P. Beausejour, Esq.
FOR THE DIVISION:	Paul J. Roberti, Esq. Assistant Attorney General
FOR AT&T:	Mary E. Burgess, Esq. Robert J. Aurigema, Esq.
FOR COX COMMUNICATIONS:	Noelle M. Kinsch, Esq.
FOR SNET CELLULAR, INC.:	Jeffrey J. Bender, Esq.
FOR THE GEORGE WILEY CENTER, THE GRAY PANTHERS, and THE CAMPAIGN TO ELIMINATE CHILDHOOD POVERTY:	Hugo Ricci, Esq.

A number of public witnesses commented on the proposal.³ Jennifer Johns, Director of Regulatory Affairs for Cox Communications, made a statement on behalf

² Entities which intervened, but did not appear at the hearings by counsel, included NEVD of Rhode Island, LLC; Sprint Communications Company LP; and MCI WorldCom, Inc.

³ Albert E. Turcotte, Sr.; Charles E. Desmarais; Irene Davis, an employee of the Woonsocket Neighborhood Development Corporation; J.R. Ouellette; Richard Addison; Elizabeth Schiller; John Patrick Gallagher; Anthony LoPresti of the Gray

of Cox. She indicated that Cox did not oppose the local calling area plan, noting that Cox intended to file a one state-one rate plan for commercial customers on May 27, 1999, and was exploring its options in the residential market.

BARI called a panel of witnesses in support of its tariff filing. Theresa O'Brien, Director of Regulatory Affairs for BARI, spoke regarding the local and tariff issues under the plan. Arthur Silvia, Bell Atlantic's Director of State Regulatory Affairs, discussed pricing and revenue impacts. Francis M. Tracey, Bell Atlantic's Director of Switch Planning, dealt with the network infrastructure issues that are addressed in the plan.

Ms. O'Brien observed that implementation of the plan would require a phased-in approach, over twelve to fifteen months.⁴ The company first plans an extensive education and outreach program to its customers. This would include visiting the regions of the state affected by the decision, explaining the changes to customers at Senior Centers and speaking with city and town officials, legislators, and members of the Chambers of Commerce. BARI would also look to community leaders to help pass the word through their organizational newsletters.⁵

Panthers; Jann Campbell, vice-president of the Coalition for Consumer Justice; Fred Burke, Executive Director of the Engine Workers of Rhode Island; Henry Shelton, Coordinator of the George Wiley Center; Savino Salerno of the Gray Panthers; Senator Marc Cote; and Robert Whatley.

⁴ T. 5/27/99, p. 73.

⁵ Ibid., p. 74.

A second venue for information dissemination is the press. Ms. O'Brien said press releases would be submitted to local media in all of the affected exchanges. Thirdly, bill inserts would inform customers of the specific changes.⁶

Mr. Tracey testified that the estimated cost for network upgrades had been reduced from \$8,100,000 to roughly \$6,500,000.⁷ The upgrades will be required because eliminating toll charges stimulates demand; more, or longer duration, calls are made, and so switches must be sized for the anticipated call volumes.⁸ Until such upgrades are performed, customers may experience a "fast busy" signal.⁹ Mr. Tracey stated that the company had experienced additional call volumes when expanded local calling was adopted in other jurisdictions.¹⁰

There is some spare capacity within the BARI system that might permit implementation more expeditiously than the fifteen months schedule projected by the filing.¹¹ Mr. Tracey could not identify which routes would be eligible for early implementation. However, once the filing is approved, the utility's engineering

⁶ Id.

⁷ Ibid., p. 76.

⁸ Ibid., p. 80. Mr. Tracey later stated that the company applied a stimulation factor of 100% to the existing trunk forecast. Ibid., p. 101.

⁹ See BARI Ex. 1, Tab 4.

¹⁰ T. 5/27/99, p. 83.

¹¹ Id. The "best case scenario" would require six to eight months for implementation. Ibid., p. 87.

section is expected to put together a detailed time line for accommodating all the changes.¹²

Ms. O'Brien explained the way in which the expanded calling areas were developed. BARI began with exchanges that had smaller calling areas. Secondly, the company analyzed toll calls of less than eleven miles, point-to-point. Finally, various community of interest concerns, such as the need for Little Compton students to reach their high school classmates in Middletown, were considered.¹³

According to Ms. O'Brien, the company established six rate groups in an attempt to minimize the inequities that existed within the present rate group structure, particularly after the proposed expansion of the local calling areas. BARI retained "exchange lines reached" as the basis upon which groups were created; the other constraint in the redesign was that no customer would experience an increase in basic service rates.¹⁴ Mr. Silvia described the results, which include variabilities in the numbers of access lines in each group,¹⁵ as "not completely balanced" and "a bit of a forced fit", but said that there were only a limited number of options to achieve the goal of collapsing the rate groups.¹⁶

¹² Ibid., p. 86.

¹³ Ibid., p. 86.

¹⁴ Ibid., p. 78.

¹⁵ The differential between Group C and Group D is 50,000 lines, but between Group D and Group E, the differential rises to 125,000 lines; between Groups E and F, the differential falls to 40,000 lines. See BARI Ex. 1, Tab 2.

¹⁶ T. 5/27/99, pp. 79-80.

The expenses associated with the system improvements, according to Ms. O'Brien, will be reflected as exogenous costs in BARI's annual PRP filing.¹⁷ The next PRP filing is due in October, 1999; however, no expenses associated with the expanded area calling will be reflected in the PRP filing until the October, 2000 filing.¹⁸

Mr. Silvia clarified the inclusion of exogenous costs. The capital costs, now estimated at \$6,500,000, exceed the annual exogenous cost limit of \$2,500,000.¹⁹ Costs above that limit could be included in a subsequent filing. However, some of the capital costs would not be considered exogenous, in any case.²⁰ Certain switch replacements, for example, would be made in the absence of the plan; only the timing of the replacement has been affected.

Mr. Silvia identified three types of ongoing lost revenues for which BARI could seek recovery under the PRP. These include the reduction in rate group monthly charges, lost toll revenues, and lost access revenues.²¹ Against these lost revenues, the company would offset any revenue gains associated with the plan.²²

¹⁷ Ibid., p. 91.

¹⁸ Ibid., p. 92.

¹⁹ Ibid., p. 117.

²⁰ Id. Mr. Silvia added, "I think what we're talking about is carrying charges associated with that capital expenditure for an additional year or two." Ibid., p.118.

²¹ Ibid., pp. 118-119.

²² Ibid., p. 119.

Because of the net lost revenues, BARI could theoretically seek an increase in residential rates; under the current PRP, rates are frozen only through January 15, 2000.²³ Even then, BARI is constrained by the price cap formula itself, which limits increases to the lesser of 5% or the GNP-PI.²⁴

Speaking to the issue of Internet access, Mr. Tracey stated his belief that one-way local calling to Providence will have a large impact.²⁵ Calls to Internet service providers typically have long holding times. Mr. Tracey was concerned that even the 100% stimulation factor which has been assumed may be insufficient to properly size the network.²⁶

On May 24, 1999, AT&T had submitted pre-filed testimony of William D. Salvatore, its District Manager for Regulatory Affairs. This testimony addressed both AT&T's contention that BARI's one-way local calling into Providence would have deleterious long-term effects on the development of local service competition in Rhode Island, and AT&T's proposal that a viable alternative which did not impede competition would be reduction of access rates to cost. At the conclusion of the hearing, Chairman Malachowski directed the parties to discuss discovery issues related to Mr. Salvatore's testimony.

²³ Ibid., p. 122.

²⁴ Id.

²⁵ Ibid., p. 126.

²⁶ Ibid., p. 127.

Commiconference wmmis on June 2,

1999;

On September 3, 1999, the Division and BARI filed a Settlement Agreement in this docket and Docket Nos. 2913 and 2914.³² The settling parties intended to resolve issues presented in all three dockets, and to amend certain sections of the PRP approved by the Commission in Docket No. 2370.³³ The Price Regulation Successor Plan (“PRSP”) provisions contained in the Settlement Agreement, to be in effect for three years, included:

- Additional price reductions of \$8,000,000 over and above those warranted by the pricing formula;
- Data network access for public and not-for-profit K-12 schools and public libraries, up to an annual funding level not to exceed \$1,750,000;
- BARI’s absorption of Lifeline credit for low-income residential consumers, up to a limit of \$2,500,000 per annum;
- A freeze on residential basic exchange rates;
- Local calling area expansion as identified in the May 3 filing, with the addition of adding the Narragansett exchange to Westerly’s local calling area, and vice versa;

³⁰ Public speakers included Ronald Kennedy, who read a letter prepared by his son, Rep. Brian Patrick Kennedy and also proffered a petition signed by Clinton T. Day; Nancy Milligan; Lisa Konicki, Executive Director of the Greater Westerly/Pawcatuck Area Chamber of Commerce; Bill Flynn, a staff member at the George Wiley Center; George J. Falco; and Kenneth Mott.

³¹ Public speakers included Keith W. Stokes, Executive Director of the Newport County Chamber of Commerce; Cathleen O’Connell; Senator Theresa Paiva-Weed; Jean Napolitano, President of New Vision; Richard Bidwell of the Gray Panthers of Rhode Island; and Henry Shelton, Coordinator of the George Wiley Center.

³² Three dockets were opened by the Commission at an open meeting on April 28, 1999. Docket No. 2912 was intended to address inequities in local calling areas; Docket No. 2913 was to explore BARI’s earnings, and Docket No. 2914 was the vehicle in which the utility’s form of regulation would be considered.

³³ See Order No. 15020 (issued June 25, 1996).

- A new pricing structure for the unlimited calling plan, which, when combined with the basic exchange rate for each of the six rate groups, yields a uniform statewide calling monthly rate of \$37.30;
- Reductions to end-to-end average intrastate switched access charges to a level of not more than \$0.05 per minute, from the current rate of \$0.065 per minute, with the proviso that any further reductions ordered in another proceeding be revenue neutral to BARI;
- Reclassification of Directory Assistance rate elements; with a rate cap for calls over the current allowance of free inquiries;
- Waiver of the Commission's annual earnings review; and
- Improvements to the Service Quality Indices.

A hearing on the Settlement Agreement was conducted on September 13,

1999. The following appearances were entered:

FOR BARI:	Keefe B. Clemons, Esq. Bruce P. Beausejour, Esq.
FOR THE DIVISION:	Paul J. Roberti, Esq. Assistant Attorney General
FOR AT&T:	Mary E. Burgess, Esq. Kenneth W. Salinger, Esq. Matthew P. Schaefer, Esq.
FOR COX COMMUNICATIONS:	Jennifer Johns, Esq.
FOR CELLULAR ONE:	Jeffrey J. Bender, Esq.
FOR THE COMMISSION:	Adrienne G. Southgate General Counsel

In keeping with the usual practice, the hearing began with public comment.³⁴

BARI then called a panel of witnesses, including Ms. O'Brien and Mr. Silvia, and

³⁴ Speakers included Sen. Marc Cote; Arlene Bolvin, President of the Coalition for Consumer Justice; John Morris, a member of the Gray Panthers; Howard Shultz, representing the Rhode Island Workers Association; William Fiske, representing the Rhode Island Department of Education; Henry Shelton of the George Wiley Center; and Michael Murphy, representing Log On America.

William E. Taylor, Senior Vice President of National Economic Research Associates, Inc.

Much of the cross-examination that followed was focussed on the issue of access charge reduction. Ms. O'Brien conceded that BARI was aware that the Commission had previously ruled that access charges would be considered within the context of Docket No. 2681.³⁵ She further admitted that only the Division and the company had negotiated and ultimately executed the Settlement Agreement.³⁶

Mr. Silvia described intrastate switched access charges as wholesale services provided to interexchange carriers, essentially a wholesale form of toll service.³⁷ The "end-to-end" average intrastate switched access charges reduced by the Settlement Agreement³⁸ included both originating access (payments made when an intrastate call originates with an end-user to the carrier) and terminating access (payments made when a carrier terminates a call to an end-user).³⁹ Mr. Silvia estimated that BARI's present share of the wholesale intrastate switched access market exceeds 90%.⁴⁰ He acknowledged that, except in cases where a carrier has direct access to a customer, which could be used for originating and terminating

³⁵ T. 9/13/99, p. 39.

³⁶ Id.

³⁷ Ibid., p. 40.

³⁸ See Settlement Agreement, Appendix 1, p. 3.

³⁹ See T. 9/13/99, p. 41.

⁴⁰ Ibid., p. 42.

access, competitors cannot offer interexchange services without using BARI's switched access services.⁴¹

Currently, given the end-to-end access rate of \$0.065 per minute, BARI derives between \$7,000,000 and \$8,000,000 per annum from wholesale access charges.⁴² The company calculated that after the expanded area implementation, its access revenues would drop by roughly \$1,200,000.⁴³

Even at the proposed end-to-end switched access rate of \$0.05 per minute, BARI conceded that the access rate is considerably in excess of cost. Mr. Silvia was unable to quantify what the rate might be if "contribution" were excluded.⁴⁴ However, Dr. Taylor guessed that "it's a number on the order of a cent or less a minute, which is a fair assumption."⁴⁵

Prior to the afternoon session of the hearing, the Chairman announced that during the luncheon recess, a call had been received from the House Majority Leader, Gerald Martineau, voicing his support for the expansion of local calling

⁴¹ Ibid., p. 43.

⁴² Ibid., p. 50.

⁴³ Ibid., p. 52.

⁴⁴ Ibid., p. 55.

⁴⁵ Ibid., p. 121.

areas. There were also communications received by facsimile from a Providence resident, Michael Moreno, and from Susan Farmer of Channel 36 and PBS.⁴⁶

The Division called its consultant, Thomas H. Weiss, to testify regarding the Settlement Agreement. He addressed the Division's rationale in supporting the Settlement Agreement, urging the Commission to focus on the implementation of a statewide calling plan, reductions in basic exchange rates of \$16,000,000 over three years, and the guarantee that residential basic exchange rates would remain frozen for the three year term of the PRSP.⁴⁷ When queried about the service quality standards, Mr. Weiss indicated that James Lanni of the Division had been the principal negotiator. However, Mr. Weiss noted that he had seen "more stringent" standards in other jurisdictions. He further recommended the adoption of wholesale service quality standards.⁴⁸

The Commission considered the Settlement Agreement at an open meeting conducted on September 14, 1999. The commissioners felt that the Company and the Division had made a good faith attempt to settle all three open dockets, and produced a package that included a number of benefits for Rhode Island consumers. However, given the Commission's previous decision as to the treatment of access charges and its concerns about due process with regard to both notice and the

⁴⁶ Subsequent to the hearing, correspondence was received from the Department of Education, taking issue with the points raised by Ms. Farmer. Like the other written submissions, this letter was included in the public comment file.

⁴⁷ Ibid., pp. 166-167.

⁴⁸ Ibid., pp. 172-173.

admission of evidence, the Commission felt that inclusion of access charge reductions was surprising.

The Chairman reviewed the history of the access charge issue, which included a letter from BARI's counsel on June 11, 1999, emphatically rejecting inclusion of access charge reform in the context of Docket No. 2912, and the comments of both AT&T and the Division as to where the issue should be decided. The Settlement's requirement that any further Commission action to reduce access charges must be revenue neutral to BARI would make future adjustments more difficult to accomplish. In fact, concerns about revenue neutrality were one of the biggest stumbling blocks to addressing the issue of calling area disparities.

There were additional concerns about the performance standards. While the parties had good intentions in tightening the standards originally adopted in Docket No. 2370,⁴⁹ the commissioners felt that there was still room for improvement. Moreover, the standards should be expanded to cover the provision of wholesale services. The Commission endorsed a comprehensive approach to performance standards which might properly be the topic of a separate docket.

Another core issue which raised Commission concerns was the erosion of the Commission's authority. Again, through reviewing the history of the issue, it is clear that the Commission has jealously guarded its prerogatives to review the Company's earnings. Previous Commission orders are explicit on the point: the

⁴⁹ During the hearing, Ms. O'Brien noted that the surveillance and action levels for five of the measurements, as well as the total points needed in order to not incur a financial penalty, had been raised. See *ibid.*, p. 129.

Commission must retain its powers to address unforeseen circumstances. The Settlement Agreement essentially asks that the Commission abdicate the authority delegated to it by the General Assembly.

Given these concerns, the Commission unanimously voted to reject the Settlement Agreement. However, the tariff filing made on May 3, 1999, had been subjected to a full evidentiary process, including three community hearings. After review, the Commission voted to accept the tariff filing. It also directed BARI to submit a specific implementation plan. Given the fact that Woonsocket was instrumental in bringing the calling areas issue to fruition,⁵⁰ the Commission asked that Woonsocket be given priority in the implementation queue. The Commission cautioned, however, that in approving the Compliance Filing, it was not approving the recovery of all expenses and revenue losses attributable to the calling area changes. The Commission indicated that this, and the remaining issues, regarding earnings and form of regulation, would require additional effort to resolve. Concern was also expressed that the original tariff filing did not include the mutual expansion of the Westerly and Narragansett exchanges, although public opinion expressed at a subsequent night hearing in Westerly strongly favored such expansion.

⁵⁰ In addition to the citizenry's petition, Woonsocket's legislative delegation spearheaded the passage of Resolution 99-S0965, passed on April 9, 1999.

On September 16, 1999, BARI revised its tariff by expanding the local service area of the Narragansett exchange to include the Westerly exchange, and expanding the local service area of the Westerly exchange to include the Narragansett exchange. The estimated revenue loss as a result of this alteration is approximately \$500,000, which BARI intends to reflect in the Actual Price Index for the annual price cap filing occurring following the implementation of the change.

The Commission considered the matter at an open meeting conducted on September 28, 1999, and unanimously approved BARI's proposal regarding the expansion of the Narragansett and Westerly exchanges. However, the Commission reiterated that in ratifying the tariff revision, it was not approving the recovery of all expenses and revenue losses attributable to this additional local calling area expansion.

Accordingly, it is

(16015) ORDERED:

1. The Settlement Agreement submitted by New England Telephone & Telegraph Company, d/b/a Bell Atlantic – Rhode Island and the Division of Public Utilities and Carriers on September 3, 1999 is hereby rejected.
2. The Compliance Filing by New England Telephone & Telegraph Company, d/b/a Bell Atlantic – Rhode Island on May 3, 1999, is hereby adopted and approved.
3. Bell Atlantic's subsequent tariff filing of September 16, 1999, is also adopted and approved.

4. Bell Atlantic is directed to submit a specific implementation plan for these tariff changes, not later than sixty days following the issuance of this Report and Order.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND PURSUANT TO OPEN MEETING DECISIONS ON SEPTEMBER 14 AND SEPTEMBER 28, 1999. WRITTEN ORDER ISSUED OCTOBER 15, 1999.

PUBLIC UTILITIES COMMISSION

James J. Malachowski, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner